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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,188	04/25/2001	John Warmington	054270-0134	3652

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EXAMINER

SHAHNAN SHAH, KHATOL S

ART UNIT PAPER NUMBER

1645

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/841,188

Applicant(s)

WARMINGTON ET AL.

Examiner

Khatol S Shahnan-Shah

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): 112 second paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 18-37.

Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Attachment to Advisory Action

1. Applicant's amendment and Reply to a final office action under 37 CFR 1.116, received 11/3/2003 is acknowledged. Claims 1-17 were canceled. Claims 23-30 and 37 have been amended.
2. Claims 18-37 are pending in the application.
3. Affidavit of Professor John Warmington dated September 9, 2003 is acknowledged.
4. On 12/10/2003 applicants' representative Allison Sheiner called in regard to a letter of revocation of power of attorney dated 10/16/2003, which was included in this application by error. The examiner respectfully apologizes for this oversight by the USPTO. The examiner has notified the responsible parties in this office. The document has been removed from this application and has been scanned into the correct application.

Rejections Withdrawn

5. Rejection of claims 24-29 and 37 under 35 U.S.C. 112 second- paragraph made in paragraph 13 of the office action mailed July 09, 2003 (paper number 14) is withdrawn in view of the applicant's amendments.

Rejections Maintained

6. Rejections of claims 18-34 and under 35 U.S.C. 102(b) as being anticipated by Buckley et al. (US 4,806,465) made in paragraphs 14 and 15 of the office action mailed July 09, 2003 (paper number 14) are maintained.

Applicants' arguments filed 11/03/2003 have been fully considered but they are not persuasive.

Applicants argue that:

- 1) Applicants have argued through an affidavit determined that there is no reactivity between Buckley's antibodies and the claimed antigen preparation when measured via immunoblotting or ELISA.
- 2) Buckley reference describes antigens extracted from the mycelial form of *Candida*, whereas applicants' recited antigens prepared from the blastospore form.
- 3) Molecular weights of disclosed antigens are different.

It is the examiners position that:

In response to the issue (1) The applicants' affidavit has been entered and considered but does not overcome the rejection because the applicants try to argue a reference which is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131.

In response to the issue (2) Buckley reference describes antigens extracted from both the mycelia or yeast form of *Candida* (see column 4, lines 21-25).

In response to the issue (3) Buckley reference teach multiple antigens including the ones having molecular weights of 55 kDa (see figures 6 and 7) 30 kDa (figure 3) and 20 kDa (see figure 3).

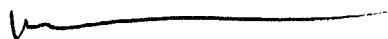
7. Rejection of claims 35-36 and under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,806,465) in view of Miyada et al. (US 5,766,874) made in paragraph 16 of the office action mailed July 09, 2003 (paper number 14) is maintained.

Applicants have not argued this rejection.

Conclusion

8. Claims 18-37 stand rejected.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahnan-Shah whose telephone number is (703) 308-8896. The examiner can normally be reached on Monday through Friday from 7:30 AM - 4 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith, can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned to is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

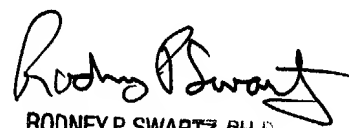


Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner

Art Unit 1645

December 14, 2003



RODNEY P SWARTZ, PH.D
PRIMARY EXAMINER